IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 687 of 1997

in

SPECIAL CIVIL APPLICATIONNo 4973 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBICA FLOUR MILLING CORPORATION
Versus
FOOD CORPORATION OF INDIA

Appearance:
Mr.S.N. Thakkar for NANAVATI ASSOCIATES for Appellant
Mr.N.K. Pahwa M/S THAKKAR ASSOC. for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 11/06/2001

C.A.V. JUDGEMENT (Per : MR.JUSTICE RAVI R. TRIPATHI)

The appellant original petitioner has filed this Letters Patent Appeal being aggrieved of the judgement and order passed by the learned Single Judge dated 18.3.1997, whereby the Special Civil Application is dismissed.

2. Short facts giving rise to the present appeal are that the petitioner, a partnership firm at Ahmedabad filed the Special Civil Application praying issuance of a writ of mandamus directing the respondents to correctly and legally implement the Circular at Annexure 'B' to the petition and to make payment of the outstanding claims of the petitioner in accordance with the provisions of the said circular, the details of which are set out at Annexure 'C' to the petition. The request was that the payment may be directed to be made with interest at 15% per annum on the outstanding amount. The petitioner is engaged in the business of running roller flour mill, which grinds wheat into various food products such as Atta, Mada, Sujee, Bran, etc. Raw material for all these products is wheat. Wheat is allotted to the petitioner on quota basis which is obtained from respondent no.1, Food Corporation of India (FCI) from its depot. The products and bye products of wheat are treated as essential commodities under the provisions of Essential Commodities Act, 1955 and therefore, their production, supply and distribution is regulated by the provisions of said Act.

3. Respondent no.1 has number of depots located at different places from where delivery is given to different roller flour mills including that of the petitioner. The concerned roller flour mill has to inform respondent no.1 as to from which depot of the FCI the mill desires to take supplies. In case such supplies are available from such depot as indicated by the mill, it is given supplies from such depot. However, where the supply cannot be made from the depot indicated by such mill, the mill is required to take supplies from the depot designated by respondent no.1 at its discretion irrespective of the distance involved.

4. Government of India having appreciated the fact that on number of occasions the millers would be required to lift their quota of wheat from far flung depots of FCI and would have to incur extra expenses of transportation to their mills and in such cases the entire operation and business of the miller becomes uneconomical; bearing this in mind the Govt. of India with an intention to give some relief in such cases provided for reimbursement of transportation and forwarding expenses on notional basis where the supply is taken from a depot of the FCI which is located more than 14 KMs from the destination rail head and which has a despatch rail head nearby.

5. The factory of the petitioner is located outside Prem Darwaja, Ahmedabad and the petitioner had informed respondent no.1 that the petitioner desires to take supplies of their quota of wheat from Sabarmati depot (Kaligam). However, respondent no.1 did not choose to give supplies from Kaligam and the petitioner was therefore, required to take its supplies of wheat quota at the instance of respondent no.1 from its depots at Adalaj and Tragad. It is the case of the petitioner that both these depots of respondent no.1 are at a distance of more than 14 KMs from the destination rail head, i.e. Kankaria Broad Guage ("BG" for brevity) and Asarwa Meter Guage ("MG" for brevity) [both Adalaj and Tragad are more than 14 KMs from Kankaria BG and Asarwa MG].

6. The case of the petitioner is that under these circumstances the petitioner was entitled to reimbursement of transportation expenses from respondent no.1 in accordance with various circular issued from time to time. The petitioner submitted that the first relevant circular in regard to such reimbursement of transport expenses is the circular issued by the Deputy Secretary to the Govt. of India, Deptt. of Food, New Delhi dated 26.5.1975, which is at Annexure 'A' to the petition. Said circular then came to be modified and amended by circular dated 11.12.1979, which is at Annexure 'B' to the petition.

7. It is the case of the petitioner that respondent no.1 had directed the petitioner to take its stock from Adalaj depot. Adalaj is not a rail head. The nearest rail head to Adalaj is Khodiyar where loading and unloading facilities are available. Thus, for all practical purposes, the despatch head for the Adalaj depot of respondent no.1 is Khodiyar which is located at a distance of about 6 KMs from Adalaj. It is also the case of the petitioner that the petitioner was required to take supplies from Adalaj from May 1978 to October

1980 and from Tragad depot in the month of February 1980. The petitioner filed its claim regarding transportation and forwarding expenses in accordance with the provisions of circular at Annexure 'B'. As respondent no.1 passed only a small part of the petitioner's claim, the petitioner was constrained to file the petition before this Court. The petitioner produced a statement of claims showing balance due with interest monthwise in respect of the claims not met by respondent at Annexure 'C' to the petition. The case of the petitioner is that the distance between the despatch rail head at Khodiyar to the destination rail head at Kankaria/ Asarwa is more than 14 KMs. This is also an admitted position that in view of the respondent's certificate dated 26.2.1979 which clearly indicates that the distance from Tragad depot as well as Adalaj depot to the petitioner's flour mill is more than 14 KMs by road. Said certificate is produced at Annexure 'D' to the petition. In view of this certificate there is no justifiable reason for the respondent not to entertain and pass the claim of the petitioner, which is admissible under the circular dated 11.12.1979 (Annexure 'B'). It is also stated by the appellant/ petitioner that in spite of number of reminders and representations made to the respondents, no categorical reply was received as to why the petitioner's claim has not been made or satisfied. It was submitted that the only reply received was a letter dated 24.4.1981 which without offering any explanation whatsoever merely stated that payment already made was in order which is produced at Annexure 'E'. It was also submitted by the petitioner that the stand taken by the respondent in its earlier letter dated 7.8.1979 was also neither justifiable in the facts and circumstances of the case of the petitioner nor in consonance and conformity with the Govt. circular at Annexure 'B'.

8. The petitioner then submitted that respondents had deliberately and intentionally deprived the petitioner of the benefits available to it under circular dated 11.12.1979 (Annexure 'B'). The respondents were dealing with the petitioner's claim by referring another circular dated 7.6.1978 which according to the petitioner had no application whatsoever to the facts of the case. The respondents tried to apply said Circular dated 7.6.1978 at Annexure 'G' to the petition without appreciating that said circular is applicable only in cases where supplies are affected from FCI depots not connected by rail and which are located at a distance more than 14 KMs from the nearest rail head, which also is the destination rail head. The respondents tried to assert that neither Adalaj nor Tragad is at more than 14

KMs from the despatch rail head which is Khodiyar. This assertion was not welfound as Khodiyar is not the destination rail head. In case of the petitioner the destination rail head is either Asarwa or Kankaria. Thus, obviously the facts of the petitioner's case were not governed by circular dated 7.6.1978.

9. The petitioner had made representations, but the same were ignored. A copy of one such representation dated 6.1.1981 is at Annexure 'H' to the petition. The petitioner had also contended that the petitioner has reliably learnt that the respondents have been settling claims of other mills which are similarly situated to the petitioner in accordance with the directions contained in circular dated 11.12.1979 (Annexure 'B'). Therefore, the petitioner contended that respondents have acted arbitrarily, capriciously and the petitioner has been subjected to discrimination by refusing his just and rightful claim. The details of such settling claims of similarly situated mills are set out in para 9 of the petition.

The learned Single Judge after having noticed the contentions raised by the petitioner in paras 3 and 4 has considered the submissions made by learned counsel for respondents wherein it was submitted that Khodiyar has never been used as a rail head by respondents. The Station Master, Khodiyar under his letter dated 5.1.1982 informed the respondents that the capacity of the goods shed for BG is 4 (four wheeled) wagons and for MG, no siding is there for loading. The learned Single Judge also took into consideration the reply of the respondents on the point of discrimination according to which the respondents had treated Khodiyar as a rail head for Baroda, Godhra and Dahod, in past but that was done by mistake which has been rectified. The learned Single Judge has also considered the letter of Station Master, Khodiyar (Western Railway), Annexure I, enclosed to the reply of the respondents, from which the learned Single Judge came to the conclusion that it is clear that the capacity of the goods shed for BG is 4 (four wheeled) and for MG wagons, no siding is there for loading. That so far as loading of food grains from Khodiyar in wagons loading is concerned, not even a single wagon is loaded from here uptil date. The letter is of January 1982. The learned Single has also referred to another letter of the Station Master, Khodiyar dated 1.6.1982 from which it transpires that IFFCO, Kalol is loading its consignment from their own siding served by KHD Station. There is no independent loading of IFFCO from Khodiyar BG or MG. The learned Single Judge after considering the rival

contentions of both the sides, concluded that it is difficult to accept in presence of the documents produced by the respondents along with reply that loading and unloading facility available for BG at Khodiyar Railway Station was sufficient for the requirement of the respondent Corporation and that Khodiyar was ever used by the respondent Corporation for loading and unloading of wheat as contended by the petitioner. The learned Single Judge also recorded that the petitioner preferred lifting the quota of wheat from Sabarmati depot and as such 50% of quota of wheat was permitted to be lifted from Sabarmati depot and rest of the quota was delivered to it from Adalaj and Tragad depots. It was required to be done so because of non availability of stock and that the petitioner did not want to wait till sufficient quantity of wheat is available at Sabarmati. The learned Single Judge also held that in absence of any proof and in absence of specific pleading of the petitioner that Khodiyar was ever used for loading or unloading of the stock by the respondents the case with which the petitioner has come up before this Court cannot be accepted.

We have gone through the pleadings and record as also the order passed by the learned Single Judge and have heard learned counsel for both the sides.

10. Clause (d) of circular dated 11.12.1979 (Annexure 'B') reads as under :

> "(d) Every effort will be made by the Food Corporation of India to build up stocks at the depots from with the roller four mills desire to make delivery of food grains though for this purpose the latter would be required to do considerable advance planning in consultation with the Food Corporation of India. However, if in spite of this planning the stock position at a particular depot is not satisfactory due to various operational reasons and the roller flour mills are required to take delivery of food grains from Food Corporation of India depots the destination rail head is beyond 14 KMs from the Food Corporation of India depot, the issue price of Rs.130/- per qtl will be for delivery loaded into trucks. The roller flour mills will be reimbursed on a national basis the forwarding charges which will include carriage charges from the Food Corporation of India depots to the nearest despatch rail head and loading into wagons at the despatch rail head plus rail

freight from the despatch station to the destination or nearest rail head."

While the clause which is sought to be relied upon by the respondents is clause (b) of circular dated 7.6.1978 (Annexure 'G'). Said clause (b) is reproduced as under:

"(b) In cases of supplies effected from FCI depots which are not connected by rail and which are located more than 14 KM distance from the nearest rail head (which also is the destination rail head), reimbursement will be to the extent of actual road transportation charges less proportionate charges for 14 KM or of rail freight for 40 KM distance whichever is less. This is also subject to modification of the charges on any change in rail freight structure. If the distance is more than 40 KM from the nearest rail head, the reimbursement will be on the basis of actual road transport expenditure less proportionate charges for 14 KM distance or the rail freight for the distance of the FCI depot from the mill, whichever is less."

This circular has no application to the facts of the present case.

From perusal of clause (d) of circular dated 11.12.1979 it is clear that in spite of this planning the stock position at a particular depot is not satisfactory due to various operational reasons and roller flour mills are required to take delivery of food grains from FCI depots and destination rail head is beyond 14 KMs from FCI depots, the issue price of Rs.130/- per quintal will be for delivery loaded into trucks. the roller flour mills will be reimbursed on a notional basis the forwarding charges from FCI depots to the nearest despatch rail head and loading into wagons at despatch rail head. In the present case it is not in dispute that Kankaria BG and Asarwa MG were destination rail heads while Khodiyar is despatch rail head for Adalaj and Tragad depots of FCI. Only because Khodiyar is not used as a rail head by the respondents, it does not render the same to be not a despatch rail head. If the respondent corporation has not used a particular despatch rail head for its purpose, that does not take away the same from that category. Besides, the respondent corporation was asked to put details as to what steps the respondent corporation has taken pursuant to the so called rectification of the mistake which is pointed out by the petitioner in case of other miller, the details of which are set out in para 9

of the petition. Learned counsel for the respondents was not in a position to give any specific answer to this question. In fact affidavit dated 2.8.2000 filed by Shri N.M. Narayanan, District Manager and authorized officer on behalf of the respondents has in terms stated in para 2 thereof that,

> "I say and submit that the Khodiyar Railway Station has been treated as Khodiyar Rail Head by the respondent F.C.I. in respect of only 3 concerns, viz. M/s Kohinoor Roller Flour Mill, Baroda, (ii) M/s Laxmi Pulse, Rice & Roller Flour Mill, Dahod and (iii) M/s Gujarat Roller Flour Mill, Godhra. .. .."

The position is then sought to be explained by saying that if Khodiyar was not treated to be a rail head, the corporation would have been required to pay more amount to these three concerns than what it has paid to them. It is surprising that as to how the respondent corporation can take such a stand if Khodiyar is a rail head, it is a rail head for all purposes and for all parties. It cannot happen and certainly it cannot be allowed by this Court to happen. The respondent corporation cannot be allowed to treat Khodiyar as a rail head qua for certain parties and not qua the petitioner. It may happen that by treating Khodiyar as a rail head if the respondent corporation has saved some amount as per its own say, it may have to pay to the petitioner on that ground. The view taken by the learned Single Judge is not found to be acceptable on the basis of the factual analysis of the pleadings and contentions as discussed by us hereinabove.

11. In the result this Letters Patent Appeal is required to be allowed and the same is hereby allowed. The judgement and order of the learned Single Judge is hereby quashed and aside. The respondent are directed to implement circular dated 11.2.1979, Annexure 'B' to the petition and make payment of the outstanding claims of the petitioner in accordance with the provisions of the said circular, Annexure 'B' to the petition. Looking to the facts of the case, interest as prayed for is not thought fit to be granted. However, the amount which is found refundable shall be refunded within three months from the date of receipt of judgement of this Court.

(M.R. Calla, J.)

(Ravi R. Tripathi, J.)

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